

This record is a partial extract of the original cable. The full text of the original cable is not available.

UNCLAS SECTION 01 OF 03 TAIPEI 002321

SIPDIS

DEPARTMENT FOR INR/R/MR, EAP/RSP/TC, EAP/PA, EAP/PD -
ROBERT PALLADINO
DEPARTMENT PASS AIT/WASHINGTON

E.O. 12958: N/A

TAGS: OPRC KMDR KPAO TW

SUBJECT: COMMENTARY ON TAIWAN CONSTITUTIONAL REVISION

In an article published by the centrist, pro-status quo China Times May 23, Professor Chu Yun-han of the National Taiwan University's Department of Political Science commented on the absurdity of Taiwan's constitutional reforms. The following is a full-text translation.

"Fantastic Story of Taiwan's Constitutional Reforms"

"The processes of Taiwan's constitutional reforms have always been full of paradoxes, absurdity, and surprises. One cannot help but sigh for the paradoxes. For example, the rules and thresholds governing the procedures to amend the Constitution look very rigid on the surface. However, through manipulations by the political parties the negotiation, deliberation, and voting [for the amendments] have been terribly rough and rash. Every time the revisions were beautified by slogans such as 'realizing political powers of the people,' 'deepening democratic reforms,' and 'for long-term national security and stability.' In fact, the actual results [of these revisions] were often damages made to the functioning of democratic governance by the constitutional rule. And the power-and-responsibility relations between constitutional organizations became more blurred while the check-and-balance and the supervision mechanisms more fragmented. The real problems regarding the power-and-responsibility imbalance that needed to be resolved by constitutional amendments were totally avoided because they did not meet the power-expanding demands of the top leadership. Issues, which obviously could be regulated by policies and laws, had to be upgraded to the constitutional level. After a whole lot of fascinating statements were added to the Constitution, nobody cares about how to implement these at the policy and law levels. Seeing the absurd developments makes one too sad to cry. For example, proposing constitutional amendments has long been the favorite political-reform 'image engineering' pursued by political leaders. They could always find alternative prescriptions to deal with trivial issues. Then presented them as 'critical reforms.' These flashy 'image engineering' projects ended without exception into constitutional 'messes.' Almost every round of constitutional reforms would leave seeds for future constitutional disputes or governance crises. A new round of revisions was often proposed to remedy mistakes and failures made during the last round. Every time the Constitution was revised, its legitimacy and authority would be reduced. One does not know where this repetitive cycle will end. Can the seventh constitutional revision, which is soon to go through the procedure of ratification by the National Assembly (NA), escape this vicious cycle?

"Two things are very bizarre with regard to the constitutional reform process this time: First, over the past ten years, the Legislative Yuan (LY) has been tying its hands and has never exercised its authority to amend [Taiwan's] Constitution. But look at the masterpiece of its first effort in leading constitutional revision: it has passed a constitutional proposal with regard to congressional reforms, which will definitely seriously undermine the Legislative Yuan's role in representing the diversity of our society and undercut its legislative and supervisory functions. Second, many political figures used to regard public participation in constitutional reform as the highest objective for democratic reforms, and as a result, they tried their best to promote the proposal of 'abolishing ad hoc National Assembly representatives' and replaced it with a 'public referendum on constitutional reform.' They also tried to package the referendum as the main course of the set meal of constitutional reform this time and define the ad hoc National Assembly election as a 'substantive' referendum. But in the end, the less than one fourth of the voter turnout rate showed that this constitutional reform lacks justification in a democratic sense and has formed a constitutional wound that is hard to mend.

"Incredibly ridiculous images have appeared from the beginning till the end of the current constitutional revision process. For one thing, this full-of-flaw amendment package was rashly adopted during an extraordinary LY session under the atmosphere of an election campaign and the pressure from a populist mobilization. During the process, party leaders became wimps and lawmakers all thought they could get away with it and refused to take any political responsibility facing the solemn issue of constitutional reform. Masterminds of the LY caucuses deliberately narrowed down the space for extensive consideration and rational debates. Only a few hearings by academics and experts were casually held as a matter of form. Even though an overwhelm majority of law and political science scholars raised questions about the improper reduction into half of LY seats and the unreasonable design of the Japanese-style two-vote system, nobody listened.

"Second, the revision process is filled with political tricks played to fool the voters. For example, the way of a forced tie-in sale is used this time. Amendments that have no systematic relations whatsoever to each other, e.g. changes to the legislature election system and changes to the constitutional revision procedures, or the reduction of LY seats and the extension of LY members' term, were forcibly bound together. These subjects should have been proposed, discussed and voted on as separate constitutional amendments. Voters should have had opportunities to express their pro and con positions on each of the proposals during the ratification process. Then members of the ad hoc National Assembly should make decisions on each amendment. But now normal goods (e.g. extending lawmakers' term to four years) and flawed goods (e.g. Japanese two-vote system) and bad goods (reduction in half of LY seats) are sold in one package and cannot be returned or changed. More ridiculous is that the rationality of the two-vote system simply had to be sacrificed in order to accommodate the populist appeal of 'reducing [LY] seats in half'.

"The worse tricks to fool the public are to use simultaneously two sets of entirely different and contradictory legal logic to formulate the ad hoc NA elections. Then selectively apply the two sets of legal logic in order to create the largest space for maneuvers by the manipulators. Whether the nature of the latest ad hoc NA elections was a selection of representatives to revise the Constitution or a substantive 'referendum on constitutional amendments' had been dubious until before the balloting day. On the one hand, the elections were dealt with according to standards for elected organizations. Therefore, no threshold for the minimum turnout rate was set. The election organizing agencies requested candidates to pay warranty deposits based on the Election and Recall Law. The LY approved budgets and compensations to be paid for the one-month NA sessions accordingly. On the other, the special ballots printed by these agencies following the National Assembly Members Election Law showed the 'pro' and 'con' positions of the political parties. This can either be interpreted as a 'political promise,' which is not legally binding, or be understood as a 'compulsory mandate,' which is legally effective. However, since the National Assembly Functions Exercising law was still lying at the LY, these two possibilities were still under a legally unstable status at the moment when the voters cast their ballots. As a result, what is the legal effect of these ballots was later determined by the two dominant parties at the LY after the elections. This kind of major legal blunders is unthinkable in any normal democratic nations.

"The LY only passed the National Assembly Functions Exercising Law after the NA elections. But there is a new controversy. On the one hand, the LY set afterwards the nature of the elections as a 'compulsory mandate.' So NA members shall vote by showing their names. If they vote in violation of their party's campaign promise, their votes will be treated as invalid votes. But the LY left a remnant. When calculating whether the yes votes have passed the three-fourth threshold, these invalid votes will be counted in the total votes. This has worried some political figures that the constitutional amendments may not be adopted as planned. They harshly criticized the National Assembly Functions Exercising Law passed by the LY. They insisted that the NA elections have always been a substantive 'referendum on the amendments,' and that the 'three-fourth' threshold is entirely unreasonable because many democratic countries have set a simple majority as the threshold for constitutional referenda. But these people cannot

justify their suggestion at all. For which advanced democratic nation would not set a threshold for the turnout rate when designing a referendum system for constitutional revision? Or is there any democratic nation, which would allow a turnout of 23.4% to constitute an effective constitutional referendum? Even Taiwan's Referendum Law requests a turnout of 50% when ratifying a law by the people, not to say ratifying a constitutional provision? In fact, it is a pointless debate now to argue whether the 'three-fourth' threshold is too high. No threshold for the turnout rate was set before the elections. Even if such a high threshold was set afterwards, it can hardly cover the two basic problems that there is a serious lack of democratic legitimacy of the latest NA elections and there are major legal flaws of the procedures.

"Voters are not stupid. They refused to be manipulated by politicians. They dislike that politicians exaggerate or misinterpret at will the results after every election, making the supporting rates into whatever things they want. Therefore, they have chosen to remain indifferent. The excessively low turnout rate is a terrible warning to politicians who are eager to manipulate with constitutional reform issues and play with the political reform 'image engineering'. Now the rating for this old drama, of which six episodes have been shot, has reached the lowest point. Most viewers have turned off their television to protest. Is the bad drama still going to be aired?"

PAAL